Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 90 of 2003

United India Insurance Company Ltd.,
through its Divisional Manager,
Divisional Office, Tikonia, Haldwani,
District-Nainital. ..... Opp.party/Appellant

Versus

(1) Sri- Janaki Prasad,
R/o Navdiya Village,
Tehsil & District Pilibhit.
..... Claimant/Respondent

(2) M/S Khatima Fibres Ltd. Khatima,
Lohia Head, Khatima,
District- Udham Singh Nagar

.....Opp.party/Respondent.

.....

Sri Prabhat Pandey, learned counsel for the appellant.
Sri Sanjay Kaushik, learned counsel for the claimant/respondent No.1
Sri C.K.Sharma, learned counsel for the respondent No.2.

Date: 27th Aug.,2004.

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by the appellant against the order dated 22.2.2003 passed by the Commissioner of Workmen's Compensation /Assistant Labour Commissioner, Kumaon Region, Haldwani (Nainital) in Workmen's Compensation Case No. D.D.W.C.A. 2 of 2002, whereby the petition of the applicant/claimant has been allowed for grant of compensation including interest.

2- Brief facts giving rise to this appeal are that the deceased Budh Sen aged 20 years, who was under the employment of employer's establishment died in an accident which occurred on 11.5.2002 in M/s Khatima

Fibres Ltd. Khatima. It was alleged that the deceased was earning Rs. 2341/- as fixed pay per month. The claimant filed the petition for compensation which was allowed including interest.

3- The Opp.parties contested the case and did not deny the accident causing the death of deceased person. The Opp.party No.1 alleged that the factory was covered under the Workmen's Insurance Policy from the United India Insurance Company and the liability, if any, to pay the compensation to the dependant of the deceased goes to the Insurance Company. The Opp. Party No.2-Insurance Company did not deny the insurance of the establishment under the workmen's Compensation Act.

4- The learned counsel for the Insurance Company challenged the impugned judgment on only one ground that the learned Commissioner erred in directing the appellant to deposit the amount of compensation directly without going into the question of liability under workmen insurance policy and further that under Section 10-A of Workmen's Compensation Act the Workmen Compensation Commissioner can only direct the employer to deposit the compensation.

5- We have gone through the impugned judgment. It is undisputed that the accident occurred during the course of employment in which the aforesaid workman died. It is clear from the findings given by the learned Commissioner that the employer has also filed the insurance cover note issued by the Insurance Company in which Khatima Fibres Ltd. (All Staff) have been insured which proves that the Opp.party No.1 was insured with Opp.party No.2. It has also been pleaded by the employer-Opp.party No.1 in its written statement that information was sent by registered post several times to the Insurance

Company well in time about the death of the aforesaid workman in the said accident. The receipts of the registered letters were also filed on the record before the Tribunal. Hence the ground of challenge has no force. **Proviso (a) of Sec. 10 of the Workmen's Compensation Act, 1923** also provides that want of a notice shall not be a bar to the entertainment of a claim preferably in a death case. Proviso (a) of Sec. 10 above reads as under:-

> *"if the claim is preferred in respect of the death of a workman resulting from an accident which occurred on the premises of the employer, or at any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him, and the workman died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred."*

6. In view of above provision, the ground of challenge is misconceived and is rejected. The findings given by the Commissioner are based on documentary evidence. We find no error or illegality in the impugned order. Accordingly, the appeal has no force on merit.

7- The appeal is dismissed. The impugned judgment and order under appeal is upheld. No order as to costs.

(B.S.Verma,J.) **(P.C.Verma,J.)**

P.Singh